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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,288	10/21/2003	Terence Tucker	TUCKR-005A	4576

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EXAMINER
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POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/690,288

Applicant(s)

TUCKER, TERENCE

Examiner

Steven B. Pollicoff

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 recites the limitation "the support rack" in line 2. There is insufficient antecedent basis for this limitation in the claim. For examination purposes examiner will assume that Applicant intended claim 14 to refer back to claim 9. Claim 15 recites the limitation "the support rack" in line 1. There is insufficient antecedent basis for this limitation in the claim. For examination purposes examiner will assume that Applicant intended claim 15 to refer back to claim 9.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Groenewold et al., (US Pat No 5,921,408).

Art Unit: 3728

With respect to claim 1, Groenewold discloses a cutlery dispenser system comprising a bin (Groenewold Fig 2 ref 10), an open bin front, a cartridge removably insertable into the bin (Fig 3 and 6) through the bin front and having at least one vertical slot (Fig 3 at 76) extending substantially along the height of the cartridge and opening to a cartridge top (Fig 6 at ref 63) and a cartridge side (at ref 92), the vertical slot containing stacked utensils with (54) handles protruding laterally beyond the cartridge side and wherein at least one of the utensils is removable by upward movement beyond the cartridge top (Fig 6 generally).

With respect to claims 2-4, Groenewold further discloses a bin cover (Fig 2 ref 22) wherein the bin has an open bin top and the cover being disposed on the bin top. Groenewold also discloses that the vertical slot is shaped to complement/accommodate utensils (Fig 7).

With respect to claim 5, Groenewold discloses a lid member removably engageable to the cartridge top (Fig 3 ref 64).

With respect to claims 6-8, Groenewold also discloses that the bin has a bottom panel, a rear wall and opposing sidewalls (Fig 9 generally) and wherein the bottom panel has a vertical lip extending upward (Fig 2 see divider between slots ref 38 at divider lip extending vertically along the height of the slots). Groenewold also discloses that the bin includes a plurality of bays separated by divider panels (ref 32-35).

Art Unit: 3728

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9,11,14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al., (US Pat No 5,921,408) in view of Kral et al., (US Pat No 4,850,511).

With respect to claims 9 and 16, Groenewold discloses all of the limitations of the claim including the bin having at least three vertical slots disposed side by side (Groenewold Fig 2 ref 32-35) except a support rack. However, Kral discloses a dispenser system with a support rack (Kral Fig 2 ref 17) to compactly store the dispenser in a confined space such as a cafeteria line (column 4, lines 63-66). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dispenser assembly of Groenewold to place it in a

Art Unit: 3728

support rack for the purpose of giving the dispenser assembly a compact and secure place to be displayed, used and easily removed.

With respect to claim 11, while Groenewold as modified does not disclose that the support rack is sized and configured to support a plurality of bins in side-by-side arrangement, it would have been an obvious design choice to one of ordinary skill in the art at the time of the invention to increase the length of the support rack such that a plurality of bins are configured in a side-by-side arrangement, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claim 14, while Groenewold as modified does not disclose that the cartridge, the bin and the support rack are each fabricated of polymeric material, the reference does disclose that a portion of the dispensing system is made of plastic (Kral Column 8, lines 1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to make the bin, cartridge and support rack of polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 17, see rejection of claim 2 above.

With respect to claim 18, see rejection of claim 3 above.

With respect to claim 19, see rejection of claim 4 above.

With respect to claim 20, see rejection of claim 5 above.

Claims 10,12,13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al., (US Pat No 5,921,408) in view of Kral et al., (US Pat No 4,850,511) as applied to claims 9 above, and further in view of Wendt (US Pat No 4,024,590).

With respect to claims 10 and 21, Groenewold as modified discloses that the support rack has an elongate groove formed in an upper portion thereof (Kral Fig 4 see top of support rack between sidewalls). Groenewold as modified does not disclose that the bin has a hook flange to removably engage with the groove. However, Wendt discloses a basin/support rack (Wendt Fig 1, reference number 1) that has an elongate groove (Fig 2 reference number 12) formed in an upper portion, that the bin (Fig 1 reference number 3) has a hook flange (Fig 2 reference number 31; see also Fig 4) formed on a side opposite that of the bin front, and that the hook flange is configured to be removably engageable to the groove for securing the bin to the support rack to support a substantial amount of weight in the bin (Column 2, lines 46-49 and 56-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the support rack and bin of Groenewold as modified to include a hook flange in the bin such that the hook flange is removably engaged with the groove, as taught by Wendt, for better support and securement of the bin when heavy objects are loaded in the bin.

With respect to claim 12, Groenewold as modified above discloses that the support rack includes a pair of spaced-apart opposing side members (Kral Fig 4 at ref 17 and the identical side member across from it, not labeled) interconnected by a first

Art Unit: 3728

transverse member (the open face wall between the side members) and that the elongate groove is formed in an upper portion of the first transverse member.

With respect to claim 13, Groenewold as modified above discloses that the support rack includes a second transverse member disposed in generally parallel spaced arrangement to the first transverse member in a tiered configuration (Kral Fig 4 see open face wall at the bottom of the support rack just below the horizontal surface) and that the second transverse member is configured to support at least one of the bins (Fig 9 generally).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al., (US Pat No 5,921,408) in view of Kral et al., (US Pat No 4,850,511) as applied to claim 9 above, and further in view of Conner (US Pat No 5,850,784).

With respect to claim 15, Groenewold as modified does not disclose that the support rack is mounted to a rotatable base. However, Conner discloses a kitchen caddy that is mounted to a rotatable base to provide ready access to a desired kitchen utensil (Conner Column 4, lines 4-6). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groenewold support rack, as modified above, to include a rotatable base for easier access to a desired kitchen utensil.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*SBP*  
SBP 8/25/06

  
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